

OPINION NO. 94

This is in response to your letter of July 11, 1980, which transmitted four disclosures of your subordinates who during their off-hours engage in the selling and purchase of real estate for their clients.

We are of the opinion that the duties and responsibilities of employees who carry on their duties and responsibilities of a Fire Fighter I do not violate any standards of conduct of the Revised Charter of Honolulu 1973 (1979 supp.) [RCH] or the Revised Ordinances of Honolulu 1978 [ROH], but the duties and responsibilities of the Fire Fighter III (Prevention Inspector) do violate the standards of conduct found in the RCH.

With respect to a Fire Fighter I, we understand that the

primary duty and responsibility relates to fighting of fires, while any duty and responsibility relating to inspection of premises are made in the course of his training to familiarize himself with fire hazards within homes or businesses in his respective geographical boundaries. The Fire Fighter I does not issue any notice of violation or are primarily engaged in Fire Code enforcement. In short, he does not have any enforcement power regarding the Fire Code.

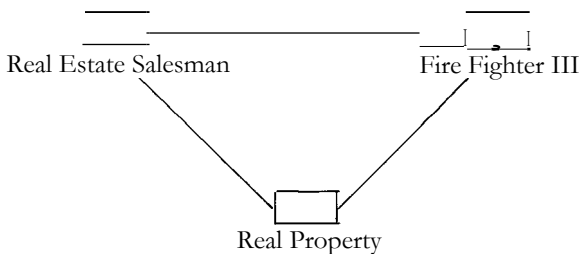
On the other hand, the Fire Fighter III's or Prevention Inspector's primary duty and responsibility relate to Fire Code enforcement which entails inspection of all types of buildings, and if there are any violations, to issue a notice of violation to the appropriate party. In short, this position has enforcement power regarding the Fire Code.

The primary standard of conduct which may be violated by the Fire Fighter III is RCH Section 11-102.3, relating to incompatibility. That section states that:

No elected or appointed officer or employee shall:

Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or which may tend to impair his independence of judgment in the performance of his official duties.

The applicability of RCH Section 11-102.3 as to the Fire Fighter III's position can best be shown by the following diagram:



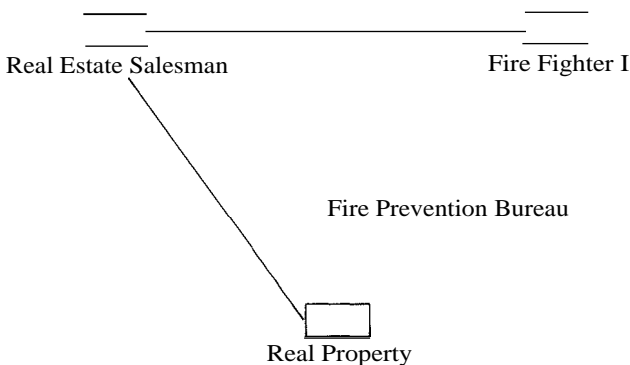
The diagram shows that the Fire Fighter III will be serving two masters. One master is his employer, the City and County of Honolulu under whose powers he is required to inspect buildings and enforce any violation of the Fire Code. The other master is his personal interest, and that is as a real estate salesman. Moreover, in both capacities he would have

jurisdiction and the power to act upon real property with buildings thereon. As a Fire Fighter III, he inspects the residential or commercial building on a property for any Fire Code violation. While as a real estate salesman, he has the privilege of engaging in the sale or purchase of real property for a commission. The existence of two masters may result in an incompatible situation in which the Fire Fighter III would have to make a decision whether or not to conduct an inspection of the residential building and issue a notice of violation if there is a Fire Code violation. On the other hand, if that particular real property is listed under the real estate broker's listings or he has a buyer for the real property, he may hesitate to issue a notice of violation because of a Fire Code violation in order to protect his private business interest. If the Fire Fighter III makes such a decision, then his independence of judgment has been affected as a Fire Fighter III.

Also, a Fire Fighter III will be tempted to issue a notice of violation on a residential or commercial building where he has no private business interest to protect as compared to a situation where a particular residential or commercial property is on his real estate broker's listings or where he has a potential buyer of such real property. If such a thing should occur, he may be in violation of RCH Section 11-104, relating to fair and equal treatment. In other words, he is prohibited from making selective enforcement of the Fire Code because of his private business interest.

As to the Fire Fighter I, his primary duty and responsibility is merely to fight fires and inspection of residential and commercial buildings are part of his training towards further advancement. In other words, he has no authority to act as an enforcement official of the Fire Code. Because he lacks such authority, he will not be in a situation to violate the provisions of RCH Section 11-102.3, relating to incompatibility or Section 11-104, relating to fair and equal treatment. The foregoing statement is supported by Opinion Nos. 1, 8 and 12, relating to selling of real estate by certain employees.

Perhaps the following diagram may illustrate the status of the Fire Fighter I and his real estate license:



Note the intervening block represented by the Fire Prevention Bureau between the Fire Fighter I and the real property, which is not present in the Fire Fighter III's diagram. Thus, the Fire Fighter I has no direct jurisdiction over the real property as to any possible violation he may find in his inspection tour of particular premises. In other words, his report has to be reviewed by the Fire Prevention Bureau whether or not there was a violation. That is, it still rests within the discretion of the Fire Prevention Bureau to re-inspect the premises to determine whether or not there was actual violation of the Fire Code. Therefore, the Fire Fighter I is not placed in an incompatible situation where he has to make a choice between the consummation of the sale of the real property for his personal financial interest, or whether he should issue a citation for a violation of the Fire Code on the same real property. In short, the primary duty and responsibility of the Fire Fighter I differs from that of the Fire Fighter III.

In view of the foregoing, we conclude that the duties and responsibilities of the Fire Fighter I do not violate the applicable provisions of the standards of conduct in the RCH, which are mentioned herein; while the duties and responsibilities of the Fire Fighter III may violate the provisions of RCH Section 11-102.3, relating to incompatibility and Section 11-104, relating to fair and equal treatment because he exercises police enforcement powers.

Dated: Honolulu, Hawaii, November 24, 1980.

ETHICS COMMISSION
Rev. William Smith, Chairman